

## SENATE BILL 62

receive a grant, a candidate must file an application with the state elections board no later than the deadline for filing nomination papers. Following the primary election or the date on which a primary would be held, if required, the board determines whether a candidate who applies for a grant meets the following eligibility requirements:

1. If the candidate seeks a partisan state office at a general election, the candidate must have received at least 6% of the total votes cast in the primary and have won the primary. If the candidate seeks a partisan state office at a special election, the candidate must either: a) appear on the ballot or in the column of a political party whose candidate for the same office at the preceding general election received at least 6% of the vote; or b) receive at least 6% of the votes cast at the special election.

2. The candidate must have an opponent in the election.

3. The candidate must receive, during a specified time period, a specified amount through contributions from individuals of \$100 or less. For a candidate for the office of governor, lieutenant governor, secretary of state, state treasurer, attorney general, justice of the supreme court, or superintendent of public instruction, the amount is 5% of the authorized disbursement level for the office which the candidate seeks. For a candidate for the office of state senator or representative to the assembly, the amount is 10% of the authorized disbursement level for the office which the candidate seeks.

Under current law, a candidate for any office who accepts a grant must comply with statutorily prescribed contribution and disbursement limitations, unless at least one of the candidate's opponents who received at least 6% of the votes cast for all candidates for that office at a partisan primary, if a primary was held, does not accept a grant and does not voluntarily agree to comply with the contribution and disbursement limitations for that office. The maximum grant that a candidate may receive is that amount which, when added to all other contributions accepted from sources other than individuals, political party committees, and legislative campaign committees, is equal to 45% of the authorized disbursement level for the office which the candidate seeks.

Currently, the elections board must notify the state treasurer that a candidate has qualified to receive a grant as soon as possible after the board is able to determine that the candidate has qualified to receive the grant. The state treasurer then has three business days to transmit the grant to the candidate.

~~This bill:~~

6. 1. Decreases the percentage of the total votes cast that a candidate for a partisan state office must receive in order to be eligible to receive a grant from the Wisconsin election campaign fund to 2% of the total votes cast in the primary election.

2. Provides that a candidate for the office of state senator or representative to the assembly must receive contributions equal to only 5% of the authorized disbursement level for the office which the candidate seeks in order to qualify for a grant, but provides that the contributions of \$100 or less from individuals used by a candidate for any state office to determine eligibility for a grant from the Wisconsin

MS 12A:1

*Opinion requests, enforcement and complaint procedure*

Currently, any interested person may request a written opinion from the elections board concerning the person's authority or responsibilities under the election laws. The board may provide the opinion. No person acting in good faith upon such an opinion is subject to prosecution for so acting, if the material facts are as stated in the opinion request. Also, currently any interested person may petition the elections board under the state administrative procedure act for a "declaratory ruling" concerning the applicability to any person, property, or facts of any election law or rule of the board. The board may issue the ruling and is thereafter bound by its decision if the facts are as stated in the petition. The declaratory ruling may be reviewed in court. In addition, currently, any elector of a jurisdiction may contest before the elections board the decision of any election official of that jurisdiction with respect to certain specified matters or the board may, on its own motion, investigate and determine whether an election official is acting in conformity with the law concerning one of those specified matters. The decision of the board may be reviewed in court. *Also, currently*

*(NOR)* Currently, the elections board may bring civil actions in circuit court to enforce the campaign finance law. In addition, district attorneys may bring civil actions to enforce that law. ~~The board may compromise and settle civil actions brought or civil actions proposed to be brought by the board for such sums as may be agreed between the board and the alleged violators.~~

This bill permits any person to request the executive director of the board to issue an opinion concerning the application of the election laws or rules of the board to a particular person or set of facts. The bill requires the executive director to issue the opinion unless the executive director finds that the request is without merit. Any opinion issued by the executive director is not binding upon the board. The bill also retains the existing procedure under which the elections board may issue formal opinions. *Th. 3*

*creates an additional*  
~~In addition, the bill substitutes a new procedure for the existing procedure under which the board brings civil actions to enforce the campaign finance law.~~  
Under the bill, any person may file a sworn complaint with the executive director of the board alleging a violation of the election laws. The executive director must investigate the complaint unless the executive director finds the complaint to be without merit. The bill also permits the executive director to investigate any violation of the election laws on his or her own initiative or upon direction of the board. The executive director may order an election official or private person to act in conformity with the election laws or rules of the board, ~~and may impose a forfeiture (civil monetary penalty) for a violation.~~  
*For enforcement of the election laws*  
The decision of the executive director may be appealed to the board. In deciding the appeal, the board is not bound by any findings of fact or conclusions of law made by the executive director with respect to the matter. If the decision of the executive director is not appealed or if the board does not modify or reverse a decision of the executive director after hearing an appeal, the decision of the executive director becomes the decision of the board. Any decision of the board is subject to judicial review in circuit court. The procedure does not apply to any alleged violation of the election laws by the board or executive director, nor to

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any matter arising in connection with a recount. The bill also directs the elections board to periodically examine and review decisions issued under the procedure with a view to clarifying and improving the administration of the election laws.

### ***Injunctive relief***

Currently, the elections board or any elector may sue for injunctive relief (a court order) requiring compliance with the elections laws. Before bringing a suit concerning a state office or statewide referendum, an elector must file a sworn complaint with the board alleging such facts as are within his or her knowledge to show probable cause that a violation has occurred or is proposed to occur. If the board does not sue for injunctive relief within ten days after filing the complaint, the elector may then file suit. This bill requires, instead, that an elector who proposes to bring suit for injunctive relief with respect to an alleged violation concerning an election for state office or a statewide referendum first must file a sworn complaint with the executive director of the board. If the executive director does not order the relief sought by the elector within ten days after the complaint is filed and the elector does not appeal the matter to the board or the board, after hearing the elector's appeal, does not order the relief sought by the elector, the elector may then sue for injunctive relief.

(unless the alleged violation relates to the board or executive director)

### ***Biennial review of campaign finance practices***

The bill directs the elections board to conduct a biennial review of campaign finance practices in this state. The review must include an assessment of the continued appropriateness of the contribution limitations prescribed by law and any other important problems that require the attention of the legislature, as well as an assessment of whether a bipartisan committee should be created to provide for additional study of issues and recommendations for possible additional legislative changes. If the board concludes that any contribution limitations should be increased or that any other action should be taken as a result of its review, the board is directed to transmit its conclusions and recommendations to the appropriate standing committees of the legislature, together with any information supporting the board's conclusions.

### ***Study of campaign finance law enforcement***

The bill requests the joint legislative council to review the process for detecting and penalizing violations of the state campaign finance law, with a view to detecting violations quickly and punishing violators firmly, and to report its findings, conclusions, and recommendations, together with any proposed legislation, to the 2003 legislature when it convenes.

### ***Future study of campaign finance reform***

Currently, the governor may create nonstatutory committees to provide advice concerning policy formation. The bill directs the governor, in cooperation with the legislature, to exercise this existing authority to create a committee to study

ANS 13-1:1

1 requested opinion unless the executive director finds that the request is without  
2 merit. An opinion of the executive director applies only with respect to the material  
3 facts described in the request. The opinion is not binding upon the board. A person  
4 may request an opinion under this section in addition to or in lieu of requesting a  
5 formal opinion of the board under s. 5.05 (6).

6 ~~SECTION 5.066~~ 5.066 of the statutes is created to read:

7 **5.066 Complaints and decision-making procedure.** (1) In this section:

8 (a) "Election official" includes any board of election commissioners under s. 7.20  
9 or governing body of a local governmental unit that has the responsibility to  
10 administer the election laws.

11 (b) "Local governmental unit" has the meaning given under s. 16.97 (7).

12 (b) "Working day" has the meaning given in s. 227.01 (14).

13 (2) Any person may file a verified complaint with the executive director of the  
14 board alleging a violation of the election laws. The executive director shall  
15 investigate the complaint unless the executive director finds the complaint to be  
16 <sup>clearly</sup> without merit. The executive director may, on his or her own motion or upon  
17 direction of the board, investigate any potential violation of the election laws  
18 whenever the executive director has probable cause to believe that a violation has  
19 occurred.

20 (3) If the complaint concerns a question as to whether an election official or a  
21 private person is acting in conformity with the law or rules of the board, the person  
22 filing the complaint shall serve a copy of the complaint upon that official or private  
23 person and that official or private person shall be a party to the case. An election  
24 official or private person may move to dismiss a complaint if it is clearly without

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1 merit. If the executive director finds, in response to a motion, that a complaint is  
2 clearly without merit, the executive director shall dismiss the complaint.

3 (4) If the executive director does not dismiss a complaint, the executive director  
4 shall issue a proposed decision, which shall include findings of fact and conclusions  
5 of law and may include an order under sub. (5).

6 (5) The executive director may order an election official or a private person to  
7 act in conformity with the election laws or rules of the board, may appoint a specially  
8 designated inspector or special master under s. 7.08 (6) or (7), or may, by order,  
9 impose a civil penalty under s. 11.60 or 12.60 (1) (bm), (c), or (d) for any violation of  
10 ch. 11 or s. 12.13 (2) (am) or (h) or (4), or both.

\*\*\*\*NOTE: This subsection assumes incorporation of LRB-1301 into the budget bill.  
If LRB-1301 is not incorporated, this subsection must be redrafted.

11 (6) The executive director may, in the discharge of his or her functions under  
12 this section and upon notice to any party being investigated, subpoena and bring  
13 before him or her any person in the state and require the production of any papers,  
14 books, or other records relevant to an investigation. A circuit court may by order  
15 permit the inspection and copying of the accounts and the depositor's and loan  
16 records at any financial institution as defined in s. 705.01 (3) doing business in the  
17 state to obtain evidence of any violation of ch. 11 upon showing by the executive  
18 director of probable cause to believe there is a violation and that such accounts and  
19 records may have a substantial relation to the violation. In the discharge of his or  
20 her functions under this section, the executive director may cause the deposition of  
21 witnesses to be taken in the manner prescribed for taking depositions in civil actions  
22 in circuit court.

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1 (7) If the executive director issues a decision under sub. (4) that contains an  
2 order under sub. (5), the order is effective upon service of the order notwithstanding  
3 any appeal to the board under sub. (8), except that the executive director may stay  
4 such an order pending an appeal to the board.

5 (8) Any party aggrieved by a proposed decision under sub. (4) may appeal the  
6 proposed decision to the board within 20 days after service of a copy of the decision  
7 upon the party. If no appeal is filed within 20 days of service of a copy of a proposed  
8 decision upon each party to the case in which the decision is made, the decision is  
9 final and becomes the decision of the board. In appealing a decision of the executive  
10 director, the appellant shall indicate in its appeal whether the appellant contests any  
11 finding of fact made by the executive director. If an appellant does not contest a  
12 finding of fact, that finding is conclusive against the appellant, unless the finding of  
13 fact is modified by the board.

14 (9) If a proposed decision of the executive director is appealed to the board, the  
15 board shall hear the appeal at its next meeting occurring at least 3 working days after  
16 the appeal is received by the board. In reviewing the decision of the executive  
17 director, the board is not bound by any finding of fact or conclusion of law made by  
18 the executive director. After hearing the appeal, the board may issue a decision,  
19 which shall include findings of fact and conclusions of law. In its decision, the board  
20 may affirm, modify or reverse an order issued by the executive director under sub.  
21 (5), and may order an election official or a private person to act in conformity with

22 the election laws or rules of the board, or may, by order, impose a civil penalty under  
23 s. 11.60 or 12.60 (1) (c) or (d) for any violation of ch. 11 or s. 12.13 (3) (am) or (h) or  
24 (4), or both. If the board does not modify or reverse a decision of the executive director

25 at the meeting at which an appeal of a decision is heard, the decision is affirmed.

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1 (10) If a person aggrieved by a decision issued under sub. (4) that contains an  
2 order under sub. (5) appeals the decision to the board and the board modifies the  
3 order, the modified order is effective upon service, except that the executive director  
4 may stay such an order pending judicial review under s. 227.57.

5 (11) The decision of the board in any contested case arising under this section  
6 is subject to review as provided in s. 227.57. In seeking judicial review of a decision  
7 of the board, the appellant shall indicate in its petition for review whether the  
8 appellant contests any finding of fact made by the executive director or the board that  
9 is not conclusive against the appellant. If the appellant does not contest any finding  
10 of fact made by the board, that finding is conclusive against the appellant.

11 ~~(12) When the board issues an order imposing a forfeiture under s. 11.60 or~~  
12 ~~12.60 (1) (c) or (d) and the period allowed under s. 227.57 for judicial review of the~~  
13 ~~order expires, the board may file a copy of its order with the clerk of circuit court for~~  
14 ~~Dane County. The clerk shall thereupon enter the order in the judgment and lien~~  
15 ~~docket in the same manner as provided for entry of civil judgments under s. 806.10.~~  
16 ~~The board may also enter the order on the judgment and lien docket of any other~~  
17 ~~county under s. 806.13. The order may be enforced and satisfied in the same manner~~  
18 ~~as provided for enforcement and satisfaction of civil judgments.~~

19 ~~(12)~~ (a) This section does not apply to any complaint brought by an election  
20 official or private person in which the board or the executive director is alleged to  
21 have violated the law.

22 (b) This section does not apply to any matter arising in connection with a  
23 recount under s. 9.01.

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1 (B)(13) The board shall periodically examine and review decisions of the executive  
2 director and the board under this section with a view to clarifying and improving the  
3 administration of the election laws of this state.

4 SECTION 6. 7.08 (2) (c) of the statutes is amended to read:

5 7.08 (2) (c) As soon as possible after the canvass of the spring and September  
6 primary votes, but no later than the first Tuesday in March and the 4th Tuesday in  
7 September, transmit to the state treasurer a certified list of all eligible candidates  
8 for state office who have filed applications under s. 11.50 (2) and ~~whom~~ who the board  
9 determines ~~to be~~ are eligible to receive payments from the Wisconsin clean election  
10 campaign system fund. The list shall contain each candidate's name, the mailing  
11 address indicated upon the candidate's registration form, the office for which the  
12 individual is a candidate and the party or principle which he or she represents, if any.

13 SECTION 7. 7.08 (2) (cm) of the statutes is amended to read:

14 7.08 (2) (cm) As soon as possible after the canvass of a special primary, or the  
15 date that the primary would be held, if required, transmit to the state treasurer a  
16 certified list of all eligible candidates for state office who have filed applications  
17 under s. 11.50 (2) and ~~whom~~ who the board determines ~~to be~~ are eligible to receive  
18 a grant from the Wisconsin clean election ~~campaign system~~ fund prior to the election.  
19 The board shall also transmit a similar list of candidates, if any, who have filed  
20 applications under s. 11.50 (2) and ~~whom~~ who the board determines ~~to be~~ are eligible  
21 to receive a grant under s. 11.50 (1) (a) 2. after the special election. ~~The~~ Each list shall  
22 contain each candidate's name, the mailing address indicated upon the candidate's  
23 registration form, the office for which the individual is a candidate and the party or  
24 principle which he or she represents, if any.

25 SECTION 8. 7.70 (3) (e) 1. of the statutes is amended to read:



✓ <sup>16</sup>  
IN SECT 14-8  
SECT#. AM; 7.70 (3)(e) 1.:

7.70 (3) (e) 1. After each September primary, the name of each candidate not defeated in the primary who receives at least ~~6%~~ 2% of the total vote cast for all candidates on all ballots at the primary for each separate state office except district attorney, and the percentage of the total vote received by that candidate. ~~Such~~ The percentage shall be calculated within each district in the case of legislative candidates.

**SECTION 5.** 8.30 (2) of the statutes is amended to read:

8.30 (2) If no registration statement has been filed by or on behalf of a candidate for state or local office in accordance with s. 11.05 (2g) ~~or (2r)~~ by the applicable deadline for filing nomination papers by ~~such~~ the candidate, or the deadline for filing a declaration of candidacy for an office for which nomination papers are not filed, the name of the candidate may not appear on the ballot. This subsection may not be construed to exempt a candidate from applicable penalties if he or she files a registration statement later than the time prescribed in ss. 11.01 (1) and 11.05 (2g).

**SECTION 6.** 8.35 (4) (a) 1. a. and b. of the statutes are amended to read:

8.35 (4) (a) 1. a. ~~Donated to the former candidate's local or state political party~~  
If the former candidate was a partisan candidate or, donated to the former candidate's local or state political party, donated to the a charitable organization of the former candidate's choice or the charitable organization chosen or transferred to the board for deposit in the Wisconsin election campaign fund, as instructed by the former candidate or, if the candidate left no instruction, by the former candidate's next of kin if the former candidate is deceased, or if no choice is made returned to the donors on a proportional basis; or

b. If the former candidate was a nonpartisan candidate, donated to the a charitable organization of the former candidate's choice or the charitable

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organization chosen or transferred to the board for deposit in the Wisconsin election campaign fund, as instructed by the former candidate or, if the candidate left no instruction, by the former candidate's next of kin if the former candidate is deceased;  
or

SECTION 7. 8.35 (4) (c) and (d) of the statutes are amended to read:

8.35 (4) (c) The transfer to the replacement candidate under par. (b) shall be made and reported to the appropriate filing officer in a special report submitted by the former candidate's campaign treasurer. If the former candidate is deceased and was serving as his or her own campaign treasurer, the former candidate's petitioner or personal representative shall file the report and make the transfer required by par. (b), if any and file the report. The report shall be made in the manner provided under s. 11.21 (16), if applicable, or otherwise at the appropriate interval under s. 11.20 (2) or (4) and shall include a complete statement of all contributions, disbursements and incurred obligations pursuant to s. 11.06 (1) covering the period from the day after the last date covered on the former candidate's most recent report to the date of disposition.

(d) The newly appointed candidate shall file his or her report in the manner provided under s. 11.21 (16), if applicable, or otherwise at the next appropriate interval under s. 11.20 (2) or (4) after his or her appointment. The appointed candidate shall include any transferred funds moneys in his or her first report.

SECTION ~~7~~ 10.02 (3) (b) 2m. of the statutes is amended to read:

10.02 (3) (b) 2m. At the September primary, the elector shall select the party ballot of his or her choice or the ballot containing the names of the independent candidates for state office, and make a cross X next to or depress the lever or button next to the candidate's name for each office for whom the elector intends to vote or

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insert or write in the name of the elector's choice for a party candidate, if any. In order to qualify for participation in the Wisconsin election campaign fund, a candidate for state office at the September primary, other than a candidate for district attorney, must receive at least ~~6%~~ 2% of all votes cast on all ballots for the office for which he or she is a candidate, in addition to other requirements.

**SECTION 9.** 11.01 (5m) of the statutes is repealed.

**SECTION 10.** 11.01 (12s) of the statutes is repealed.

**SECTION 11.** 11.01 (13) and (20) of the statutes are created to read:

11.01 (13) "Mass mailing" means the distribution of 50 or more pieces of substantially identical material.

(20) "Telephone bank operator" means any person who places or directs the placement of telephone calls to individuals.

**SECTION 12.** 11.01 (16) (a) 3. of the statutes is created to read:

11.01 (16) (a) 3. A communication that is made by means of one or more communications media or a mass mailing, or through a telephone bank operator, other than a communication that is exempt from reporting under s. 11.29, that is made during the period beginning on the 60th day preceding an election and ending on the date of that election and that includes a name or likeness of a candidate whose name is certified under s. 7.08 (2) (a) or 8.50 (1) (d) to appear on the ballot at that election, the name of an office to be filled at that election, or the name of a political party.

**SECTION 13.** 11.05 (1) of the statutes is renumbered 11.05 (1) (a) and amended to read:

11.05 (1) (a) Except as provided in s. 9.10 (2) (d), every committee, other than a personal campaign committee, and every political group subject to registration

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1 treasurer of a group shall certify the correctness of each statement or report  
2 submitted by it under this chapter.

3 **SECTION 66.** 11.23 (2) of the statutes is amended to read:

4 11.23 (2) Any anonymous contribution exceeding \$10 received by an individual  
5 or group treasurer may not be used or expended. The contribution shall be donated  
6 to the common school fund or to any charitable organization or transferred to the  
7 board for deposit in the Wisconsin election campaign fund, at the option of the  
8 treasurer.

9 **SECTION 67.** 11.24 (1m) of the statutes is repealed.

10 **SECTION 68.** 11.24 (1v) of the statutes is created to read:

11 11.24 (1v) No registrant may accept any contribution made by a committee or  
12 group that does not maintain ~~an office~~ street address within this state at the time  
13 that the contribution is made unless that committee or group is registered with the  
14 federal election commission under 2 USC 433 (a). *under s. 11.05 or  
15 registered*

15 **SECTION 69.** 11.24 (1w) of the statutes is created to read:

16 11.24 (1w) No candidate or personal campaign committee of a candidate who  
17 applies for a grant under s. 11.50 may accept any contribution from a committee  
18 other than a political party committee.

19 **SECTION 70.** 11.24 (2) of the statutes is renumbered 11.24 (5).

20 **SECTION 71.** 11.24 (4) of the statutes is created to read:

21 11.24 (4) (a) No person may make a contribution to an incumbent partisan state  
22 elective official or to the personal campaign committee or support committee  
23 authorized under s. 11.05 (3) (p) of that official for the purpose of promoting that  
24 official's nomination or reelection to the office held by the official during the period  
25 beginning on the first Monday of January in each odd-numbered year and ending

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or rejection of the referendum shall pass. The corporation or association shall file periodic reports under s. 11.20 and under s. 11.21 (16), if applicable, providing the information required under s. 11.06 (1).

SECTION 97. 11.50 (1) (a) 1. (intro.) of the statutes is created to read:

11.50 (1) (a) 1. (intro.) For purposes of qualification for a grant from the general account.

SECTION 98. 11.50 (1) (a) 1. of the statutes is renumbered 11.50 (1) (a) 1. a. and amended to read:

11.50 (1) (a) 1. a. With respect to a spring or general election, any individual who is certified under s. 7.08 (2) (a) as a candidate in the spring election for justice or state superintendent, or ~~an~~ any individual who receives at least ~~6%~~ 2% of the vote cast for all candidates on all ballots for any state office, except district attorney, for which the individual is a candidate at the September primary and who is certified under s. 7.08 (2) (a) as a candidate for that office in the general election, or an individual who has been lawfully appointed and certified to replace either such individual on the ballot at the spring or general election; and who has qualified for a grant under sub. (2).

SECTION 99. 11.50 (1) (a) 2. of the statutes is renumbered 11.50 (1) (a) 1. b. and amended to read:

11.50 (1) (a) 1. b. With respect to a special election, an individual who is certified under s. 8.50 (1) (d) as a candidate in a special election for state superintendent, or an individual who is certified under s. 8.50 (1) (d) as a candidate in a special election for any state office, except district attorney, on the ballot or column of a party whose candidate for the same office at the preceding general election received at least ~~6%~~ 2% of the vote cast for all candidates on all ballots for the office, or an individual who

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1 be fined not more than ~~\$10,000~~ \$30,000 or imprisoned for not more than ~~4~~ 13 years  
2 and 6 months or both.

3 (c) Whoever intentionally violates any provision of this chapter other than  
4 those provided in par. (a) and whoever intentionally violates any provision under par.  
5 (b) where the intentional violation concerns a specific figure which does not exceed  
6 \$100 in amount or value may be fined not more than ~~\$1,000~~ \$3,000 or imprisoned for  
7 not more than ~~6 months~~ one year in the county jail or both.

8 SECTION 154. 11.66 of the statutes is renumbered 11.66 (1) and amended to  
9 read:

10 11.66 (1) Any elector may sue for injunctive relief to compel compliance with  
11 this chapter. Before commencing any action concerning a an election for state office  
12 or a statewide referendum, an elector shall file a verified complaint with the executive director of the board  
13 under s. 5.066 (2) alleging such facts as are within his or her knowledge to show  
14 probable cause to believe that a violation has occurred or is proposed to occur. The ~~if~~ ← strike  
15 verified complaint shall include a notice that the elector intends to seek relief under  
16 this section. EXCEPT as provided in Sub. (2), if ~~the executive director of the board fails to commence an action under~~  
17 the relief that is sought by the elector under s. 5.066 (5) within 10 days of the filing  
18 of the complaint and the elector does not appeal the matter to the board under s.  
19 5.066 (8) or the board, after hearing the elector's appeal, does not order the relief  
20 sought by the elector under s. 5.066 (9), the elector may commence an action.

21 (B) (13) Separate from any other bond which may be required by the court, the  
22 elector may be required to post a surety bond in an amount determined by the court  
23 sufficient to cover the actual costs, including reasonable attorney fees, of both  
24 parties. If the elector's action is not successful, he or she shall pay the costs of the  
25 action. (8)

11.66(2) If the complaint relates to a matter specified in s.  
5.066(2)(a), the elector may commence an action under sub. (1)  
upon compliance with sub. (1).

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~~25.17 (1) (ys) Wisconsin clean election campaign system fund (s. 25.42);~~

**SECTION 164.** 25.42 of the statutes is amended to read:

**25.42 Wisconsin clean election campaign system fund.** All moneys appropriated under s. 20.855 (4) (b) and (ba) together with all moneys reverting to the state under s. 11.50 (8) and all gifts, bequests and devises received under s. 11.50 (13) constitute the Wisconsin clean election campaign system fund, to be expended for the purposes of s. 11.50. All moneys in the fund not disbursed by the state treasurer shall continue to accumulate indefinitely.

**SECTION 165.** 71.10 (3) (a) of the statutes is amended to read:

71.10 (3) (a) Every individual filing an income tax return who has a tax liability or is entitled to a tax refund may designate \$1 for the Wisconsin clean election campaign system fund for the use of eligible candidates under s. 11.50. If the individuals filing a joint return have a tax liability or are entitled to a tax refund, each individual may make a designation of \$1 under this subsection.

~~**SECTION 166.**~~ 227.03 (6m) of the statutes is created to read:

227.03 (6m) Cases before the executive director of the elections board under s. 5.066 are not subject to ~~this chapter~~ *ss. 227.42 and 227.44 to 227.50* ✓

~~**SECTION 167.**~~ 227.52 (8) of the statutes is created to read:

227.52 (8) The decisions of the executive director of the elections board under s. 5.066.

~~**SECTION 168.**~~ 773.135 of the statutes is repealed.

**SECTION 9115. Nonstatutory provisions; elections board.**

(1) INITIAL TERMS OF OFFICE. Notwithstanding section 15.61, 1999 stats., and section 15.61 of the statutes, as affected by this act, the members of the elections board who are serving on the effective date of this subsection may continue to hold

**2001-2002 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2872/linsMK  
MDK:.....

**INSERT 2A:**

candidate time on public broadcasting television stations and public access channels,

**INSERT 2B:**

The bill also requires free time for candidates for state office on public broadcasting television stations and public access channels.

**INSERT 13A:**

**PUBLIC BROADCASTING TELEVISION STATIONS AND PUBLIC ACCESS CHANNELS**

This bill requires free time on public broadcasting television stations and public access channels for candidates for state office. Under current law, the Federal Communications Commission grants licenses for the operation of public broadcasting television stations. Also under current law, a city, village, or town is authorized to grant a franchise to a person that allows that person to operate a cable television system in the city, village, or town. Under the franchise, the person may be required to provide cable television channels that the city, village, or town may use for public, educational, or governmental purposes. A channel that is used exclusively for public, rather than educational or governmental purposes, is commonly referred to as a public access channel. A city, village, or town may operate a public access channel, or a city, village, or town may allow another person to operate the channel.

This bill requires the elections board to promulgate rules that require licensees of public broadcasting stations and operators of public access channels to provide a minimum amount of free time to candidates for state office. The rules must require the same amount of time for each candidate for a particular state office, but may require different amounts of time for different offices.

**INSERT 15-6: 15-16 :**

<sup>✓</sup> (17g) "Public access channel" means a channel that is required under a franchise granted under s. 66.0419 (3) (b) by a city, village, or town to a cable operator, as defined in s. 66.0419 (2) (b), and that is used for public access purposes, but does not include a channel that is used for governmental or educational purposes.

(17r) "Public access channel operator" means a person designated by a city, village, or town as responsible for the operation of a public access channel.

**INSERT 24-5:**

**SECTION 1.** 11.21 (18) of the statutes is created to read:



1           11.21 (18) Promulgate rules that require public access channel operators and  
2           licensees of public television stations <sup>in this state</sup> to provide a minimum amount of free time on  
3           public access channels and public television stations to <sup>individuals</sup> ~~an individual~~ whose ~~name~~ <sup>names</sup>  
4           ~~is~~ certified under s. 7.08 (2) (a) or 8.50 (1) (d) to appear as a candidate <sup>are</sup> for state office  
5           on the ballot at ~~a~~ general, spring, or special election. <sup>S</sup> The rules promulgated under  
6           this subsection shall require public access channel operators and licensees of public  
7           television stations to offer the same amount of time to each candidate for a particular  
8           state office, but may require different amounts of time <sup>to be offered to candidates</sup> for different offices.

Lenz ms >

✓

**2001-2002 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2872/linsJTK  
JTK .....

**INSERT 3A:**

Under this bill, this exception does not apply to a registrant who or which does not maintain a street address within this state. However, the bill permits a committee or group which does not maintain a street address within this state to make a contribution or disbursement without registering under state law if the committee or group is registered with the federal election commission under federal law. The bill also specifically prohibits a registrant from accepting any contribution made by a committee or group that does not maintain a street address in this state at the time that the contribution is made, unless the committee or group is registered with the appropriate filing officer under state law or is registered with the federal election commission under federal law. Federal law generally requires registration by organizations only when they make or receive contributions or make expenditures with respect to elections for federal office.

**INSERT 8A:**

This bill prohibits any legislative campaign committee from receiving more than a total of \$25,000 in contributions from special interest ("political action") committees during the period beginning on the day after the general election and ending on the last day of the last general floor period of the succeeding legislative session, unless a special election is ordered to fill a vacancy in the house in which the committee is organized, in which case the committee may receive additional contributions from special interest committees during that period in a total amount not exceeding \$25,000.

**INSERT 9A:**

**CONTRIBUTION RESTRICTIONS**

***Personal campaign committee contributions to certain federal registrants***

Currently, a committee that is subject to a registration requirement under state law may make a contribution to be used in connection with a campaign for national office if that contribution is lawful under federal law. This bill prohibits a personal campaign committee of a candidate for state or local office in this state from making a contribution to a committee that is registered with the federal election commission, other than an authorized committee of a candidate for national office or a national or state political party committee.

11.05 (6) (b) Paragraph (a) does not apply to a committee or group that is registered with the federal election commission under 2 USC 433 (a) at the time that the contribution or disbursement is made.

INSERT 18-10:

SECTION 2. 11.06 (4) (e) of the statutes is amended to read:

11.06 (4) (e) Notwithstanding pars. (a) to (e), receipt of contributions by registrants under s. 11.05 (7) (a) shall be treated as received in accordance with that subsection.

History: 1973 c. 334; 1975 c. 93 ss. 47 to 53, 119 (2); 1975 c. 199; 1979 c. 263, 328; 1985 a. 303; 1987 a. 370; 1989 a. 192; 1995 a. 16 s. 2.

INSERT ~~24-17~~ 24-17

SECTION 3. 11.24 (1r) of the statutes is created to read:

11.24 (1r) (a) Except as authorized in s. 11.16 (5), no individual who is a candidate or former candidate for state office, no personal campaign committee or former personal campaign committee of such an individual, and no support committee or former support committee authorized under s. 11.05 (3) (p) by such an individual, may make a contribution to a candidate or former candidate for local office, personal campaign committee or former personal campaign committee of such an individual, or support committee or former support committee authorized by such an individual under s. 11.05 (3) (p) by such a candidate or committee in a campaign for local office. (b) Except as authorized in s. 11.16 (5), no individual who is a candidate or former candidate for local office, no personal campaign committee or former personal campaign committee of such an individual, and no support committee or former support committee authorized under s. 11.05 (3) (p) by such an individual, may make

a contribution to a candidate or former candidate for state office, personal campaign committee or former personal campaign committee of such an individual, or support committee or former support committee authorized under s. 11.05 (3) (p) by such an

a candidate

or for the purpose of retirement of obligations incurred by such an individual or committee in a campaign for state office

SECTION 4. 11.24 (1w) of the statutes is created to read:

INS 25-12

11.24 (1w) (a) "Federal political registrant" means a committee that is registered with the federal election commission under 2 USC 433 (a), other than an authorized campaign committee designated under 2 USC 432 (e) (3), a national political party committee, or a state political party committee.

(b) No personal campaign committee may make a contribution to a federal political registrant.

INSERT 26-5:

SECTION 5. 11.25 (2) (ap) of the statutes is created to read:

11.25 (2) (ap) 1. Except as authorized in s. 11.16 (5), no individual who is a candidate or former candidate for state office, no personal campaign committee or former personal campaign committee of such an individual, and no support committee or former support committee authorized under s. 11.05 (3) (p) by such an individual, may make a disbursement for the purpose of supporting or opposing a candidate for local office.

2. Except as authorized in s. 11.16 (5), no individual who is a candidate or former candidate for local office, no personal campaign committee or former personal campaign committee of such an individual, and no support committee or former

(c) This subsection does not apply to a contribution that is made by a candidate to another candidate directly from the property or funds of the contributor.

support committee authorized under s. 11.05 (3) (p) by such an individual, may make a disbursement for the purpose of supporting or opposing a candidate for state office.

INSERT 33-18:

(aw) 1. Except as provided in subd. 1 and subject to sub. (10a), no legislative campaign committee may receive more than a total of \$25,000 in value of contributions from all committees identified as special interest committees under s. 11.05 (3) (c) during the period beginning on the day after the general election and ending on the last meeting day of the last floorperiod of the succeeding legislative session for the transaction of business other than veto review, as established by joint resolution of the legislature.

2. If a special election is ordered to be held to fill a vacancy in the house of the legislature in which a legislative campaign committee is organized, the legislative campaign committee may receive during the period specified in subd. 1. additional contributions not exceeding a total value of \$25,000 in value from special interest committees, as identified under s. 11.05 (3) (c).

INSERT 42-6:

(c) For purposes of administering ss. 71.07 (5d), 71.28 (5d), and 71.47 (5d), the board shall forward a copy of each affidavit filed under this subsection by a candidate for state office to the department of revenue and shall notify the department of revenue immediately if such a candidate is ~~not bound by~~ <sup>subject to</sup> the limitations under sub.

(2) and s. 11.26 (10) described in the affidavit

INSERT 52-20:

^

**SECTION 6.** 11.50 (3) (c) of the statutes is created to read:

11.50 (3) (c) If there are insufficient moneys in the fund to make any transfer that is required to be made under par. (a) or (b), the state treasurer shall transfer the ~~remaining~~ balance in the fund to the account to which the transfer is required to be made.

*no ff*  
- 2 -  
The prohibition does not apply to a contribution made by a candidate to another candidate directly from the property or funds of the contributor.

INSERT 10A:

The bill also prohibits a candidate or former candidate for state office, personal campaign committee or former personal campaign committee of such a candidate, or support committee or former support committee authorized by such a candidate from making a contribution to a candidate or former candidate for local office, personal campaign committee or former personal campaign committee of such a candidate, or support committee or former support committee authorized by such a candidate, or vice versa in the case of a candidate or former candidate for local office. Similarly, the bill prohibits a candidate or former candidate for state office, personal campaign committee or former personal campaign committee of such a candidate, or support committee or former support committee authorized by such a candidate, from making a disbursement for the purpose of supporting a candidate for local office, or vice versa in the case of a candidate or former candidate for local office.

*or personal campaign or support committee of a candidate*

*or for the purpose of retirement of obligations incurred in a campaign for local office*

INSERT 11A:

*no ff* In each year prior to a year in which an election for the office of state superintendent of public instruction is scheduled, 8% of the moneys designated by taxpayers to be transferred to the fund for that year is set aside to finance payment of grants to candidates for the office of superintendent.

INSERT 11B:

*no ff*, and in each year prior to a year in which an election for the office of state superintendent of public instruction is scheduled, an amount must be set aside from taxpayer donations to the general account, after the full amount of any set aside for the office of justice is made, sufficient to finance the full amount of grants for which candidates for the office of superintendent qualify. These amounts must be set aside before amounts are made available from the general account to finance the payment of grants to candidates for any other offices. Under the bill, if the balance in the fund is insufficient to set aside the required amounts, the entire balance in the fund is set aside.

INSERT 16-14:

SECTION 1. 11.05 (6) (b) of the statutes is created to read:

12n  
LRB-2872/P200

DRAFTER'S NOTE  
FROM THE JTK/RJM/MES/MDK/JK:cs:pg  
LEGISLATIVE REFERENCE BUREAU

April 30, 2001

Representative Duff: *#. This draft now includes all items in your instructions, as well as our responses to your E-mails. Please let us know if there is anything we have omitted.*

1. This draft is in preliminary form and does not completely reflect your instructions. We wanted to get you as much of the draft as soon as possible in order to facilitate a timely review. This version incorporates all of the items from LRB-1157/1 and a tax credit for free media access. It also incorporates some corrections to the /P1 draft. The items from your instructions that are not included at this time relate to equal access for candidates to public broadcasting and cable access television and limitations on committees.

*With regard to the tax credit*

*TWS DIA*  
*TWS From P. 2*  
The instructions indicate that you wanted a tax "deduction" for corporations that provide free media access to qualified candidates. However, for Wisconsin corporate income and franchise tax purposes, a corporation cannot claim a "deduction," but may, instead, claim any applicable tax credit. Therefore, this draft creates a tax credit for corporations that provide free media access to qualified candidates. Please let us know if this not consistent with your intent.

*This draft limits the credit to access granted to candidates who are bound by disbursement and contribution limits.*

3. Under this draft, state party committee PAC limits include amounts contributed to state sub-units and state affiliates, but not to local party committees and their local sub-units and local affiliates. Similarly, the local party committee PAC limits include amounts contributed to local sub-units and local affiliates, but not to state party committees and their state sub-units and state affiliates. See proposed s. 11.26 (8). This approach applies the limit to all party committees that are likely aware of each other's activities and prevents a committee that is subject to a limit from spinning off an unlimited number of subunits and affiliates, each of which could accept contributions up to the applicable maximum amount. Please let us know if this approach is not consistent with your intent.

The local party committee contribution limits established under the draft are dependent upon the population of the county in which the local party committee primarily operates. Please let us know if this treatment is not consistent with your intent.

4. This draft establishes contribution and disbursement limits that are dependent upon the population of certain areas. This draft includes a procedure for the elections board to determine and publish these populations. See proposed s. 11.263. Generally, the determinations must be based upon the best available data from the federal decennial census. Please let us know if you desire any changes.

*DATE ISSUED 13*



Effective with the taxable year beginning on January 1, 2002, JTK/RJM/MES/MDK/JK:cs;

~~§. This draft repeals the checkoff procedure for funding the Wisconsin election campaign fund and replaces it with a procedure that allows individuals, committees, and other persons to make donations to the fund and that allows individuals to claim a tax credit of up to \$5 for donations they make to the fund on their individual income tax returns. The draft transfers amounts in the fund on the day the bill takes effect to the general account.~~

6. Currently, under ss. 11.50 (2) (a) and (i), stats., a candidate must swear that he or she has adhered and will continue to adhere to all disbursement and contribution limitations in order to receive a grant, unless the candidate is opposed by another candidate who could have qualified for a grant but declines to accept one. A candidate who declines to accept a grant may nevertheless bind his or her opponent receiving a grant to adhere to disbursement and contribution limitations if the candidate files an affidavit of voluntary compliance with all disbursement and contribution limitations under s. 11.31 (2m), stats. The instructions for this draft specified that if a candidate filed an affidavit of voluntary compliance with disbursement limitations, the candidate would be entitled to more generous contribution limitations. This draft, therefore, limits the affidavit of voluntary compliance under s. 11.31 (2m), stats., to a pledge to adhere to disbursement limitations (plus self-contribution limitations, which the U.S. Supreme Court has treated the same as disbursement limitations for purposes of constitutional analysis under *Buckley v. Valeo*, 96 S.Ct. 612, 650-653 (1976)). The draft, however, continues to require a candidate who actually receives a grant to adhere to all disbursement and contribution limitations. Please let us know if this is not in accord with your intent.

7. This draft, in its treatment of s. 11.50 (3) (a) 2., stats., provides that the supreme court account has first draw on all available moneys derived from taxpayer designations for the proposed general account. Because, under the draft, candidates for partisan offices may receive funding from political party accounts, this may leave campaigns for the office of state superintendent of public instruction underfunded in comparison to other campaigns for state offices. Under s. 11.50 (3) (a) 1., stats., the superintendency account receives 8% of available moneys in those years preceding the year of an election for that office. If you want to rebalance the allocation of moneys available for candidates for state superintendent, you may wish to consider changing the amount of this set-aside.

3. Proposed s. 11.51 of this draft provides for public funding of campaigns for county or 1st class city offices by local option. Under the draft, a county or city may condition its financing upon agreement by a candidate to accept spending or self-contribution limits specified by the county or city. ~~The draft does not provide for these limits to be constrained by the disbursement levels or contribution limitations prescribed under ch. 11, stats., which are currently unenforceable under *Buckley v. Valco, et. al.*, 96 S. Ct. 612 (1976). Please let me know if you believe that a county or city should not permit disbursements or self-contributions to exceed the state limitations.~~

~~9. With respect to injunctive relief, the proposed changes to s. 11.66, stats. in LRB-1157/1 were integrated with proposed s. 5.066 of that draft, which revised the procedure for enforcement of the election laws. Since proposed s. 5.066 is not included~~

in this draft, the draft does not include that portion of the changes to s. 11.66, stats., in LRB-1157/1 that permitted the executive director of the elections board to order relief, and that further permitted an elector seeking relief to appeal a denial of relief by the executive director to the board, which was then permitted to order the relief sought. This draft retains requirements for an elector seeking relief to file a sworn complaint with the executive director and to include with the complaint notice that the elector intends to sue for injunctive relief. In accordance with current law, if the board fails to file suit within 10 days, the elector may then file suit. Please let us know if you would like to see a different treatment of this issue.

10. There is some authority for the proposition that application of different contribution limits to candidates depending upon whether they accept public grants may be viewed as unconstitutionally coercing candidates to accept public financing. See *Wilkinson v. Jones*, 876 F. Supp. 916, 928 (W.D. Ky. 1995), which holds that a five-to-one disparity in contribution limits and state matching grants for contributions received by nonparticipating candidates are unconstitutionally coercive. This draft, in its treatment of s. 11.26 (1), stats., and in proposed s. 11.26 (1m), imposes separate contribution limitations for candidates who agree to adhere to disbursement and self-contribution limitations, with certain exceptions, regardless of whether they accept public grants. It should be noted that the U.S. Supreme Court has not ruled on this point and there is some disagreement between the lower federal courts regarding the coerciveness of public financing mechanisms.

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[MDK]

INSERT  
D0072 C2

RVS D3A

RVS D3B

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2872/1dinsRM

RJM:.....

NOTE  
INSERT B

First

near

# but →  
no  
number

In a recent ~~email~~ <sup>l.c.</sup>, you requested a provision granting the elections board authority to set parameters for the free media that a broadcaster may grant to a candidate under the tax credit. We assume you intend the rules to cover something other than a cap on the amount of the tax credit, which may be added to the bill after you ~~here~~ <sup>hear</sup> from the department of revenue. However, it is unclear what type of rules you intend to authorize the elections board to promulgate. Currently, the bill does not grant rule making authority with regard to the tax credit.

# but →  
no  
number

In order to draft the requested provision, it would be helpful to have a few examples of specific aspects of the free media tax credit that you intend the rules to address. As you consider this issue, please note that you may want to avoid regulating the content of a candidate's message. Content-based restrictions on political speech are subject to strict scrutiny under the 1st Amendment and, if challenged, would be difficult to defend.

First

## As we previously noted, there is a possibility that the 2-1 contribution cap gap in this bill may be challenged as unconstitutionally coercing candidates to accept public financing and, thereby, be bound by contribution and disbursement limits. The 1st Circuit U.S. Court of Appeals has held that a 2-1 cap gap is constitutional. See *Vote Choice, Inc. v. DiStefano*, 4 F. 3d 26, 38-39 (1st Cir. 1993). This case provides relatively strong support for the proposition that the 2-1 cap gap established by this bill is constitutional. However, because neither the U.S. Supreme Court nor the U.S. Court of Appeals with jurisdiction over Wisconsin has ruled on this issue, it is possible that the 2-1 cap gap could still be held unconstitutionally coercive.

INSERT NOTE C 2

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2872/1dnMK  
MDK:.....

2/15/04  
DNOTE C

Representative Duff:

- #. This bill requires the elections board to promulgate rules requiring free time on public broadcasting television stations and public access cable television channels. The board has the discretion to determine the amount of time. Also, the board's rules will have to address issues that aren't addressed in the bill, such as when the time must be provided. Is that okay, or do you want the bill to impose more detailed requirements? Also, you might consider imposing a deadline for the elections board to submit the proposed rules to the legislative council. In addition, depending on when the bill is enacted, you might want to require the elections board to promulgate emergency rules.

Mark D. Kunkel  
Legislative Attorney  
Phone: (608) 266-0131  
E-mail: mark.kunkel@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2872/1dni  
JTK.....

①  
# • Proposed s. 11.24 (1r) of this draft prohibits <sup>transfer</sup> of campaign funds by candidates for state office to candidates for local office, and vice versa. This subsection does not apply to contributions made by a candidate to another candidate directly from the candidate's personal property or funds. Please let us know if this is not in accord with your intent. ✓

DIA  
②  
XX Per your <sup>l.c.</sup> E-mail of 5/1, this draft restores the new procedure for enforcement of the election laws in proposed s. 5.066, as well as all the changes concerning injunctive relief in s. 11.66, stats. However, it does not include the procedure under which the executive director may impose civil forfeitures, subject to review by the board. Under the draft, the authority of the executive director is limited to ordering compliance with the election laws. The existing procedure for imposing civil forfeitures is retained. Please let us know if this is not in accord with your intent. ✓

③  
XX The <sup>PP2</sup> draft, in proposed s. 11.05 (7m), permitted nonresident registrants to use property or funds acquired prior to registration for the purpose of making contributions or disbursements if certain disclosures are made. The draft also, in its treatment of s. 11.05 (6), stats., exempted federal candidate committees and national political party committees from the prohibition against using property or funds acquired prior to registration to make contributions or disbursements. This draft deletes these proposed changes because they are inconsistent with s. 11.05 (6) (a), stats. [as affected by this draft] and proposed s. 11.05 (6) (b) and 11.27 (1v), which permit committees and groups to make contributions and disbursements only if they are registered with the appropriate filing officer under state law or are registered with the federal election commission. To the extent that this draft relies upon federal law to provide disclosure of state and local campaign finance activity, it should be noted that committees and groups that are engaged solely in state or local activity are not subject to federal registration requirements and it is unknown to what extent federal reporting requirements will be enforced against such committees or groups. ←

D3B  
✓  
(a) Proposed s. 11.24 (1v), which restricts the acceptance of contributions made by certain nonresident contributors.

(b) Proposed s. 11.24 (1w), which prohibits personal campaign committees from making contributions to certain federally-registered committees.

(c) Proposed s. 11.26 (8), which imposes cumulative limitations upon contributions received from special interest ("political action") committees by legislative campaign committees. ✓

committees that make certain mass communications within 60 days of an election containing a name or likeness of a candidate at that election, an office to be filled at that election or a political party, appears to extend beyond the boundaries which the court permitted in 1976. As a result, its enforceability at the current time appears to rest upon a shift by the court in its stance on this issue. In this connection, see also *North Carolina Right to Life, Inc., v. Bartlett*, 168 F. 3d 705 (4th Cir. 1999), cert. denied, 120 S. Ct. 1156 (2000), in which the court voided North Carolina's attempt to regulate issue advocacy as inconsistent with *Buckley*.

do not number this paragraph  
We want to note briefly that a few of the provisions of this draft are innovative, and we do not yet have, to my knowledge, specific guidance from the U.S. Supreme Court concerning the enforceability of provisions of these types. It is well possible that a court may find a rational basis for these provisions that would permit them to be upheld. However, because of the concerns expressed by the U.S. Supreme Court in *Buckley v. Valeo, et al.*, 96 S. Ct. 612 (1976), and certain other cases, that attempts to regulate campaign financing activities may, in some instances, impermissibly intrude upon freedom of speech or association or upon equal protection guarantees, it is possible that enforceability problems with these provisions may occur. In particular, those provisions concerning which we do not have specific guidance at this time are:

(a) Proposed s. 11.12 (8), which requires candidates who do not accept public grants to file special reports that are not required of candidates who accept public grants.

(b) Proposed s. 11.24 (1v), which restricts the acceptance of contributions made by nonresident contributors.

(c) Proposed s. 11.50 (9) (b) and (ba), which provides public grants to qualifying candidates to match certain independent disbursements and disbursements exceeding the disbursement limitations by candidates who do not accept public grants. Although relevant case law has developed regarding this issue in the federal courts of appeal, there is no consensus among these courts on this issue. Due to the unsettled nature of the law in this area, it is not possible to predict how a court would rule if proposed s. 11.50 (9) (b) or (ba) were challenged.

(d) Proposed s. 11.19 (1m) and (6), which mandates disposal of certain campaign funds in a specified manner.

(e) Proposed s. 11.26 (8m) and (8n), which prohibits committees from making contributions to certain other committees. Although the U.S. Supreme Court has not ruled on the enforceability of a provision of this type, the court has indicated some willingness to permit limits on contributions beyond those specifically approved in *Buckley v. Valeo*, 424 U.S. 1. See *California Med. Assn. v. FEC*, 453 U.S. 182, 193-99 (1981) (\$5,000 limitation on individual-to-PAC contributions is a reasonable method of preventing individuals from evading limits on direct campaign contributions).

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2872/1dn  
JTK/RM/JK/MK:csj:f

May 16, 2001

Representative Duff:

1. This draft now includes all items in your instructions, as well as our responses to your e-mails. Please let us know if there is anything we have omitted.
2. Per your e-mail of 5/1, this draft restores the new procedure for enforcement of the election laws in proposed s. 5.066, as well as all the changes concerning injunctive relief in s. 11.66, stats. However, it does not include the procedure under which the executive director may impose civil forfeitures, subject to review by the board. Under the draft, the authority of the executive director is limited to ordering compliance with the election laws. The existing procedure for imposing civil forfeitures is retained. Please let us know if this is not in accord with your intent.
3. The P/2 draft, in proposed s. 11.05 (7m), permitted nonresident registrants to use property or funds acquired prior to registration for the purpose of making contributions or disbursements if certain disclosures are made. The draft also, in its treatment of s. 11.05 (6), stats., exempted federal candidate committees and national political party committees from the prohibition against using property or funds acquired prior to registration to make contributions or disbursements. This draft deletes these proposed changes because they are inconsistent with s. 11.05 (6) (a), stats., [as affected by this draft] and proposed ss. 11.05 (6) (b) and 11.27 (1v), which permit committees and groups to make contributions and disbursements only if they are registered with the appropriate filing officer under state law or are registered with the federal election commission. To the extent that this draft relies upon federal law to provide disclosure of state and local campaign finance activity, it should be noted that committees and groups that are engaged solely in state or local activity are not subject to federal registration requirements and it is unknown to what extent federal reporting requirements will be enforced against such committees or groups.
4. Proposed s. 11.24 (1r) of this draft prohibits transfer of campaign funds by candidates for state office to candidates for local office, and vice versa. This subsection does not apply to contributions made by a candidate to another candidate directly from the candidate's personal property or funds. Please let us know if this is not in accord with your intent.
5. Proposed s. 11.51 of this draft now provides for public funding of campaigns for any county, city, village, or town offices by local option. Under the draft, a county or city

must condition its financing upon agreement by a candidate to accept statutory spending and self-contribution limits.

6. With regard to the tax credit for corporations that provide free media access to qualified candidates, this draft limits the credit to access granted to candidates who are bound by disbursement and contribution limits.

In a recent e-mail, you requested a provision granting the elections board authority to set parameters for the free media that a broadcaster may grant to a candidate under the tax credit. We assume you intend the rules to cover something other than a cap on the amount of the tax credit, which may be added to the bill after you hear from the department of revenue. However, it is unclear what type of rules you intend to authorize the elections board to promulgate. Currently, the bill does not grant rule-making authority with regard to the tax credit.

In order to draft the requested provision, it would be helpful to have a few examples of specific aspects of the free media tax credit that you intend the rules to address. As you consider this issue, please note that you may want to avoid regulating the content of a candidate's message. Content-based restrictions on political speech are subject to strict scrutiny under the First Amendment and, if challenged, would be difficult to defend.

7. Effective with the taxable year beginning on January 1, 2002, this draft repeals the checkoff procedure for funding the Wisconsin election campaign fund and replaces it with a procedure that allows individuals, committees, and other persons to make donations to the fund and that allows individuals to claim a tax credit of up to \$5 for donations they make to the fund on their individual income tax returns.

8. This bill requires the elections board to promulgate rules requiring free time on public broadcasting television stations and public access cable television channels. The board has the discretion to determine the amount of time. Also, the board's rules will have to address issues that aren't addressed in the bill, such as when the time must be provided. Is that okay, or do you want the bill to impose more detailed requirements? Also, you might consider imposing a deadline for the elections board to submit the proposed rules to the legislative council. In addition, depending on when the bill is enacted, you might want to require the elections board to promulgate emergency rules.

9. As we previously noted, there is a possibility that the 2-1 contribution cap gap in this bill may be challenged as unconstitutionally coercing candidates to accept public financing and, thereby, be bound by contribution and disbursement limits. The First Circuit U.S. Court of Appeals has held that a 2-1 cap gap is constitutional. See *Vote Choice, Inc. v. DiStefano*, 4 F. 3d 26, 38-39 (1st Cir. 1993). This case provides relatively strong support for the proposition that the 2-1 cap gap established by this bill is constitutional. However, because neither the U.S. Supreme Court nor the U.S. Court of Appeals with jurisdiction over Wisconsin has ruled on this issue, it is possible that the 2-1 cap gap could still be held unconstitutionally coercive.

We also want to note briefly that a few of the provisions of this draft are innovative, and we do not yet have, to our knowledge, specific guidance from the U.S. Supreme



Court concerning the enforceability of provisions of these types. It is well possible that a court may find a rational basis for these provisions that would permit them to be upheld. However, because of the concerns expressed by the U.S. Supreme Court in *Buckley v. Valeo, et al.*, 96 S. Ct. 612 (1976), and certain other cases, that attempts to regulate campaign financing activities may, in some instances, impermissibly intrude upon freedom of speech or association or upon equal protection guarantees, it is possible that enforceability problems with these provisions may occur. In particular, those provisions concerning which we do not have specific guidance at this time are:

- (a) Proposed s. 11.24 (1v), which restricts the acceptance of contributions made by certain nonresident contributors.
- (b) Proposed s. 11.24 (1w), which prohibits personal campaign committees from making contributions to certain federally-registered committees.
- (c) Proposed s. 11.26 (8), which imposes cumulative limitations upon contributions received from special interest ("political action") committees by legislative campaign committees.

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E-mail: mark.kunkel@legis.state.wi.us

**Barman, Mike**

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**From:** Kuesel, Jeffery  
**Sent:** Tuesday, May 01, 2001 4:46 PM  
**To:** Gretschmann, Karen; Barman, Mike; Williams, Landon  
**Subject:** FW: Rep Duff LRB 2872

-----Original Message-----

**From:** Kalies, Tim  
**Sent:** Tuesday, May 01, 2001 10:49 AM  
**To:** Kuesel, Jeffery  
**Subject:** Rep Duff LRB 2872

Can you please send us a copy of the latest draft of (LRB 2872) in a .pdf file? We would much appreciate it.

Thanks, Tim

**TIMOTHY J. KALIES**

**Legislative Assistant  
State Representative Marc Duff  
Republican, 98th Assembly District  
Phone: (608) 266-1190 Fax: (608) 282-3698  
E-mail: [tim.kalies@legis.state.wi.us](mailto:tim.kalies@legis.state.wi.us)**

05/01/2001

**Barman, Mike**

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**From:** Barman, Mike  
**Sent:** Tuesday, May 01, 2001 4:52 PM  
**To:** Rep.Duff  
**Subject:** LRB-2872/P2 (attached - requested by Tim)

***Mike Barman***

Mike Barman - Senior Program Asst. (PH. 608-266-3561)  
(E-Mail: [mike.barman@legis.state.wi.us](mailto:mike.barman@legis.state.wi.us)) (FAX: 608-264-6948)

State of Wisconsin  
Legislative Reference Bureau - Legal Section - Front Office  
100 N. Hamilton Street - 5th Floor  
Madison, WI 53703

05/01/2001

## Kuesel, Jeffery

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**From:** Duff, Marc  
**Sent:** Thursday, October 11, 2001 4:11 PM  
**To:** Kuesel, Jeffery  
**Subject:** Redraft of LRB2872 - Campaign Finance Reform

Hi Jeff...I believe I have enough to submit to you my proposals for a redraft of LRB2872. I expect to have a few other items and I'll get them to you asap. Thanks.

First the easy ones...Delete the following:

- ✓ -Tax Credit for Free Media Access
- ✓ -Public Funding of Local Campaigns
- ✓ -Keep the PAC/WEFC grant limit at 45%

Revisions...

- ✓ -Include Congressional District Parties in the \$75,000 PAC limit
- ✓ -Include the SB115 definitions of "Communication" and "Independent Expenditure". However, I would like to make sure "mass mailings" are considered a communication...so does that need to be added?
- ✓ -In Section 125...keep the Dept. of Revenue certification to annual rather than quarterly.
- ✓ -Keep the PAC contribution limits the same amount as current law...except we would keep the dollar figures the same, rather than the 4% of spending limit as provided for statewide candidates.
- ✓ -Adjust the spending limits as follows: Governor (\$2,750,000), Lt. Gov (250,000), Sec State & Treasurer (\$300,000), State Senate (\$112,500), Assembly (\$45,000). Attorney General, DPI & Supreme Court State the same as in the current draft.
- Include the following concept as described by Bob Conlin in the memo below. This attempts to provide a higher trigger for the release of the spending limits due to independent expenditures or issue advertising.



11duffr0.pdf

- The drafting notes suggested deadlines for the Elections Board to promulgate rules and emergency rules is a good idea.

### *Independent Expenditures and "Issue Ads"*

Any candidate in a race may file with the Elections Board a request to have the spending and contribution limits applicable to all candidates in the race set aside if independent expenditures or "issue ads" are inserted in the race by individuals, committees (other than personal campaign committees or political party committees), or other organizations, either against the candidate or for his or her opponent and those ads are deemed likely to have an unfair impact on the race. The request may be made if those expenditures or ads are made by the following means: (1) broadcast television and radio ads; (2) print media, including newspapers and magazines; or (3) direct mail.

The board (or board staff) must issue an order setting aside the spending and contribution limits applicable to all candidates in the race if the application, which must be sworn to by the candidate, asserts that any of the following occurred: (1) broadcast television and radio ads were aired in the contested jurisdiction; (2) print media, including newspapers and magazines, ran ads in the contested jurisdiction; or (3) direct mail ads were distributed in the contested jurisdiction. Further, the application must assert that those ads met criteria established by the Elections Board, by rule, which define whether such ads are likely to have an unfair impact in the race.

The rules shall determine whether an ad is likely to have an unfair impact on the race based upon: (1) for broadcast television and radio ads, the percentage of the voting age population in the contested jurisdiction the ad is presumably intended to reach based upon the broadcast medium's gross rating points; (2) for print media, the presumed cost of the ads; and (3) for direct mail, the number of pieces of mail presumably sent to residents in the contested jurisdiction.

The board (or board staff) must issue the order or deny the request within three calendar days of receiving the request. Generally, if the request asserts the requisite facts, the board (or board staff) must issue the order. The board (or board staff) would be empowered to request of any broadcaster verification that an ad was run in the contested jurisdiction.

## Kuesel, Jeffery

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**From:** Duff, Marc  
**Sent:** Tuesday, October 16, 2001 9:30 AM  
**To:** Kuesel, Jeffery  
**Subject:** RE: Redraft of LRB2872 - Campaign Finance Reform

Thanks...I certainly understand the work interruptions you are facing and the extra time it will take to draft some of my suggested changes.

Thanks for all of your diligent work on this project.

✓ One clarification I just remembered was to have the "general fund" for public grants be used to equalize grants that are given through party accounts. For example, if the Dem received a \$10,000 grant and the GOP a \$7500 grant, the general fund would be used to boost the GOP candidate first to equalize the grant before the Dem candidate recieved funds from the general fund.

marc

-----Original Message-----

**From:** Kuesel, Jeffery  
**Sent:** Friday, October 12, 2001 10:45 AM  
**To:** Duff, Marc  
**Cc:** Marchant, Robert  
**Subject:** RE: Redraft of LRB2872 - Campaign Finance Reform

Marc,

I went through your revisions and I think they are pretty straightforward, except that the revision concerning independent expenditures and issue ads will take a little extra reflection and effort to carry out. We will try to deal with this soon, but are getting some interruptions with the floorperiod now beginning and many legislators in town. I will keep in touch. Send us any additional changes when you have them. If we get them in time to include in the next draft, we will do so; otherwise we can include them later.

I assume it's OK to talk to Bob Conlin about the attachment if we need to.

Jeff

-----Original Message-----

**From:** Duff, Marc  
**Sent:** Thursday, October 11, 2001 4:11 PM  
**To:** Kuesel, Jeffery  
**Subject:** Redraft of LRB2872 - Campaign Finance Reform

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<< File: 11duffr0.pdf >>

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